

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TIMOTHY WAYNE CAPERS, SR.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:20-CV-945-WHA-JTA
)	
THOMAS HUGGHINS, <i>et al.</i> ,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, an inmate incarcerated at the Covington County Jail in Andalusia, Alabama, files this 42 U.S.C. § 1983 action challenging the living conditions and the provision of medical and mental health care at the jail. Plaintiff also claims a fellow inmate—Mathew Zigglar—sexually assaulted him and that the response to the assault by jail officials was inadequate. Named as defendants are Sheriff Blake Turman, Thomas Hugghins, Lieutenant Mandy, Mrs. Betty, and inmate Mathew Zigglar. Plaintiff sues Defendants for their mistreatment and humiliation of him and requests attention for his medical and mental health needs. Doc. 1. Upon review, the court concludes dismissal of Plaintiff’s complaint against Defendant Zigglar prior to service of process is appropriate under 28 U.S.C. § 1915A.

I. STANDARD OF REVIEW

The Prison Litigation Reform Act, as partially codified at 28 U.S.C. § 1915A, requires this court to screen complaints filed by prisoners against government officers or employees as early as possible in the litigation. The court must dismiss the complaint or any portion thereof that it finds frivolous, malicious, seeks monetary damages from a defendant immune from monetary relief, or which states no claim upon which relief can be granted. 28 U.S.C. §1915A(b)(1) & (2). Under §

1915A(b)(1) the court may dismiss a claim as “frivolous where it lacks an arguable basis in law or fact.” *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim is frivolous when it “has little or no chance of success,” that is, when it appears “from the face of the complaint that the factual allegations are clearly baseless or that the legal theories are indisputably meritless.” *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993). A claim is frivolous as a matter of law where, *inter alia*, the defendants are immune from suit, *id.* at 327, the claim seeks to enforce a right that clearly does not exist, *id.*, or an affirmative defense would defeat the claim, such as the statute of limitations, *Clark v. Georgia Pardons & Paroles Bd.*, 915 F.2d 636, 640 n.2 (11th Cir. 1990). Courts are accorded “not only the authority to dismiss [as frivolous] a claim based on indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Neitzke*, 490 U.S. at 327.

The court may dismiss a complaint, or any portion thereof, under 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief may be granted. Dismissal under § 1915A(b)(1) may be granted “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (*citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). A review on this ground is governed by the same standards as dismissals for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See Jones v. Bock*, 549 U.S. 199, 215 (2007). To state a claim upon which relief may be granted, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). To state a claim to relief that is plausible, the plaintiff must plead factual content that “allows the court to draw the reasonable inference that the defendant is liable for the

misconduct alleged.” *Id.* The allegations should present a “‘plain statement’ possess[ing] enough heft to ‘show that the pleader is entitled to relief.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. When a successful affirmative defense, such as a statute of limitations, appears on the face of a complaint, dismissal for failure to state a claim is also warranted. *Jones*, 549 U.S. at 215.

Pro se pleadings “are held to a less stringent standard than pleadings drafted by attorneys” and are liberally construed. *Boxer X v. Harris*, 437 F.3d 1107, 1110 (11th Cir. 2006). However, they “must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.

II. DISCUSSION

Plaintiff alleges his rights were violated when fellow inmate Mathew Ziglar sexually assaulted him. Prior to the challenged assault, Plaintiff asserts inmate Ziglar had engaged in multiple attempted assaults of him. Doc. 1 at 3.

An essential element of a 42 U.S.C. § 1983 action is that the alleged constitutional deprivation was committed by a person acting under color of state law. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999); *Parratt v. Taylor*, 451 U.S. 527 (1981); *Willis v. Univ. Health Servs.*, 993 F.2d 837, 840 (11th Cir. 1993). Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach “merely private conduct, no matter how discriminatory or wrongful.” *Am. Mfrs.*, 526 U.S. at 50 (internal quotations and citations omitted). Consequently, “state action requires *both* an alleged constitutional deprivation caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible, *and*

that the party charged with the deprivation must be a person who may fairly be said to be a state actor.” *Id.* (internal quotation marks and citations omitted) (emphasis in original).

Based on a review of the complaint, it is clear that Defendant Zigglar is not a state actor nor does the complaint allege any actions taken by this individual can in any way be attributed to the State. Plaintiff’s § 1983 claim against his fellow inmate is therefore frivolous on the basis that Defendant Zigglar is not a state actor, and Plaintiff’s complaint against this defendant is subject to summary dismissal under 28 U.S.C. § 1915A(b)(1).

III. CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that:

1. Plaintiff’s § 1983 claim against Defendant Zigglar be DISMISSED with prejudice prior to service of process under 28 U.S.C. §1915A(b)(1):
2. Defendant Zigglar be TERMINATED as a party to the complaint;
3. This case regarding Plaintiff’s allegations against the remaining defendants be referred to the undersigned for further proceedings.

On or before January 5, 2021, Plaintiff may file an objection to the Recommendation. Any objection filed must specifically identify the factual findings and legal conclusions in the Magistrate Judge’s Recommendation to which Plaintiff objects. Frivolous, conclusive or general objections will not be considered by the District Court. This Recommendation is not a final order and, therefore, it is not appealable.

Failure to file a written objection to the proposed findings and recommendations in the Magistrate Judge’s report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall “waive the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions” except upon

grounds of plain error if necessary in the interests of justice. 11TH Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

DONE this 14th day of December, 2020.

/s/ Jerusha T. Adams

JERUSHA T. ADAMS

UNITED STATES MAGISTRATE JUDGE